

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF OREGON

3 THE HON. MICHAEL J. McSHANE, JUDGE PRESIDING

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6 THE LANCE AND LINDA NEIBAUER)
JOINT TRUST, by and through LANCE)
7 NEIBAUER, as trustee,)

8 Plaintiff,)

9 v.)

10 MICHAEL J. KURGAN,)

11 Defendant.)
12 _____)

No. 6:14-cv-01192-MC

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14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 EUGENE, OREGON

16 WEDNESDAY, SEPTEMBER 3, 2014

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1 PROCEEDINGS

2 WEDNESDAY, SEPTEMBER 3, 2014

3 THE CLERK: Now is the time set for Civil Case
4 14-01192, Lance and Linda Neibauer Joint Trust versus
5 Kurgan, Rule 16 conference.

6 THE COURT: Hi folks. This is Judge McShane.
7 Thanks for joining me this afternoon. If I could have each
8 representative on the phone, beginning with plaintiff,
9 please introduce themselves, and if you could spell your
10 last name for our court reporter.

11 MS. FOX: Yes. Good afternoon, Your Honor. This
12 is Emily Teplin Fox, F-O-X, for plaintiff Lance and Linda
13 Neibauer Joint Trust.

14 THE COURT: All right. Thank you, Ms. Fox.

15 MR. KURGAN: Michael Kurgan, K-U-R-G-A-N, the
16 defendant.

17 THE COURT: All right. Thank you, Mr. Kurgan.

18 So what I want to do is just get us on a schedule
19 in terms of discovery, dispositive motions, and I do want to
20 set some trial dates and then talk a little bit about
21 discovery and just kind of get some sense of what the scope
22 of that will be.

23 I guess first I'd like to -- we do need to move
24 forward. This is a pretty simple contract case. There
25 seems to be a lot of litigation about where the case should

1 be.

2 So Mr. Kurgan, I am going to rule now on your
3 motions. I am not going to spend a lot of time with the
4 response. Some of these issues you can reraise at a later
5 date.

6 But the motion to dismiss for lack of personal
7 jurisdiction, I am going to rely on the findings that were
8 already made by the California court regarding contacts in
9 Oregon. I am denying that motion.

10 The motion to dismiss for improper venue is
11 denied.

12 The motion to strike the first claim on the
13 anti-SLAPP theory, I will allow you to reraise that in the
14 dispositive motion, but it will be denied for now without
15 prejudice.

16 Motion to strike claim for attorney fees, I mean,
17 that just isn't typical that we would raise that issue now.
18 You can certainly raise it when they seek attorney fees, but
19 I am denying the motion at this time.

20 And motion to transfer the matter to the Southern
21 District of Florida is denied.

22 The case is going to be tried here and we need to
23 get moving on it. This isn't a complicated case. It's a
24 contract case. We need to set a fairly robust schedule and
25 get a decision out so that you folks know how to move on

1 with the case.

2 So you folks, I believe, have already set fact
3 discovery deadline at November 21st; is that correct?

4 MS. FOX: Yes, Your Honor.

5 THE COURT: All right. So Ms. Fox, what are you
6 envisioning in terms of who you are deposing?

7 MS. FOX: Your Honor, plaintiff actually agrees
8 with your assessment of the case. It's a relatively simple
9 contract dispute. We intend to move for summary judgment
10 within 30 days, hopefully by the end of the month, without
11 conducting any discovery.

12 THE COURT: All right. So is it your thought that
13 there's just an issue of law regarding the contract that we
14 maybe should decide first, or are there some -- or do you
15 have just -- well, I guess that's my question.

16 Go ahead.

17 MS. FOX: We think the case can be decided on
18 issues of law, as you suggest, as well as just undisputed
19 facts.

20 THE COURT: All right. Mr. Kurgan, your thoughts
21 on that?

22 MR. KURGAN: Um, I personally don't see how that's
23 possible, but, you know, there's several, I think, disputed
24 facts that are material to -- you know, that were in the
25 pleadings that, you know, there was an addendum signed, was

1 the addendum -- you know, the pleadings, you know, stated
2 that it terminated on the 14th of this year. There was a
3 typographical error. I think, you know, that it's -- the
4 very nature of an addendum to extend a lease is -- you know,
5 it would have been basically the same day. So that doesn't
6 make any sense to me.

7 And then, you know, there's the -- I guess a
8 triable issue of was there a waiver for the date for me to
9 exercise the option to purchase the aircraft.

10 THE COURT: All right. But is that something you
11 think, other than the documents itself, the contract and any
12 other surrounding documents as well as your own declarations
13 with regard to your understanding or things that might have
14 suggested a waiver, is there a streamlined way we can get to
15 me deciding what in fact the contract says without having to
16 take on the costs of deposing -- I mean, I don't know where
17 it would help you to depose, for instance, the -- you know,
18 the holders of the trust or the trust representatives, you
19 know, outside of the contract itself and any declaration you
20 wanted to add with regard to facts.

21 MR. KURGAN: Well, it's important -- I mean, I am
22 a little disappointed that it's -- you know, my motion is
23 not being heard for the transfer of venue because --

24 THE COURT: I read your memo. Mr. Kurgan, I think
25 you are mistaking that you weren't heard. I heard you

1 because you filed a memo and I read it. And everything that
2 you plan on telling a court, I need to tell you, you are not
3 entitled to oral argument. There are times where I find
4 oral argument is helpful, and I will set oral argument. I
5 will likely set oral argument on the dispositive motion.

6 But if you are telling me you forgot to put
7 something in your writing, then I would advise you you need
8 to start getting an attorney. I am not hear to listen to
9 your disappointment about my ruling. Lawyers aren't allowed
10 to express their --

11 MR. KURGAN: Okay.

12 THE COURT: Don't interrupt.

13 Lawyers aren't expressing their disappointment
14 with my rulings, and I will expect the same of you if you
15 are not going to have a lawyer. You are going to have to
16 live with my rulings. You don't have to like them. You can
17 appeal them and it won't hurt my feelings, but I am not
18 going to sit and listen to your disappointment.

19 So the question that I have that I want you to
20 answer is rather than racking up a lot of expenditures over
21 depositions and exchange of documents, is there a
22 streamlined legal issue that we can start with over what the
23 contract actually says?

24 MR. KURGAN: I guess, Your Honor, when I see the
25 discovery and the calculations of the damages, then I can

1 respond to that. The pleadings, you know, on the face
2 weren't descriptive enough for me to actually -- to make
3 that determination.

4 I do believe we have a defense that we were
5 fraudulently induced to enter the contract. I will need
6 depositions from the people in Aurora, Oregon and where the
7 hot section was allegedly supposed to be performed.

8 I have information in San Diego that the aircraft
9 was supposed to be delivered in an airworthy condition and
10 it wasn't, and there should be a cost offset to that.

11 So I guess at some point, you know, we made our
12 motions, you denied them, but I also believe the court said
13 they were going to set a date for me to answer and possibly,
14 you know, file any countersuit that I have. So I don't have
15 that date yet either.

16 THE COURT: My understanding is you filed an
17 answer in this case. Are you saying you haven't filed an
18 answer yet?

19 MR. KURGAN: No, I have not.

20 THE COURT: Okay. When are you going to file your
21 answer?

22 MR. KURGAN: Can I have ten days to file an
23 answer?

24 THE COURT: Yes.

25 MR. KURGAN: Okay.

1 THE COURT: Okay. So let's do this:

2 You know, I guess still what I don't understand,
3 Mr. Kurgan, is whether -- you know, notwithstanding whether
4 there are certain fact issues about damages, is there at
5 least an initial decision you think the court should make
6 about the scope of the contract that might help us all
7 figure out where we go next, or should we let it all open
8 and go right into full discovery on everything?

9 MR. KURGAN: I would suggest we just go into full
10 discovery on everything.

11 THE COURT: Okay. And why is that? I mean, if I
12 were to rule against you on the contract, there might be
13 other issues, then, that we can narrow. If I rule in your
14 favor, I would think, you know, it would certainly limit the
15 plaintiff's case dramatically.

16 I guess what I would like to do is focus on --
17 well, let me ask Ms. Fox, I mean, what are you envisioning
18 the dispositive motion to be focused on?

19 MS. FOX: Your Honor, we plan to move for summary
20 judgment on all of our claims. We believe we have
21 contemporaneous documentation that will establish our
22 damages to a degree of certainty that would enable the court
23 to make a summary judgment decision of the case.

24 If Mr. Kurgan -- perhaps upon seeing our motion,
25 if Mr. Kurgan can articulate the particular discovery he

1 believes he needs to properly oppose the motion, you know,
2 certainly he can do that under the rules.

3 THE COURT: All right. Why don't we do this:

4 Mr. Kurgan will file his answer in ten days. And
5 my understanding, then, is the plaintiffs are going to file
6 a dispositive motion, are you saying within 30 days?

7 MS. FOX: Yes.

8 THE COURT: All right. Within 30 days. For this
9 period, then, I am going to stay discovery. And let's take
10 a look at the dispositive motion, give Mr. Kurgan a chance
11 to respond to it. There would be 14 days to respond plus an
12 additional -- excuse me -- 21 days to respond and then 14
13 days for a reply.

14 And we'll see, really, where the case is. If it
15 does not look like there can be an appropriate response
16 without further discovery on the specific issues of the
17 motion, we can set a status hearing and have a discussion at
18 that time.

19 But I would like to take a look, if we can, at the
20 more narrow issues of the contract and see if those can be
21 decided without a lot of kind of fact discovery that may or
22 may not be germane to the contract.

23 So for now I am going to stay discovery. We'll
24 take a look at the dispositive motion.

25 And Mr. Kurgan, if you will call my -- or contact

1 my courtroom deputy, Ms. Charlene Pew, if you want to set a
2 further status conference after you receive the dispositive
3 motion, and if there is some limited discovery you think you
4 need to do in order to go forward on that dispositive
5 motion, we can discuss it at that time.

6 Okay? Any questions for either side?

7 MR. KURGAN: No, Your Honor.

8 MS. FOX: Your Honor --

9 THE COURT: Yes. Go ahead, Ms. Fox.

10 MS. FOX: Thank you, Your Honor.

11 Your Honor, I just wanted to clarify that the
12 plaintiff will produce all contemporaneous e-mails and other
13 documentation that it thinks is necessary for its summary
14 judgment motion to Mr. Kurgan promptly.

15 THE COURT: Okay. I appreciate that. Let's do
16 that sooner than later.

17 All right. So yes, with regards to any exhibits
18 that you are going to be attaching to a dispositive motion,
19 please exchange those as soon as possible.

20 Okay. Anything else?

21 All right, then. Thank you very much. I
22 appreciate it.

23 MS. FOX: Thank you.

24 *(The proceedings were concluded this*
25 *3rd day of September, 2014.)*

1 I hereby certify that the foregoing is a true and
2 correct transcript of the oral proceedings had in the
3 above-entitled matter, to the best of my skill and ability,
4 dated this 8th day of June, 2015.

5
6 /s/Kristi L. Anderson

7 Kristi L. Anderson, Certified Realtime Reporter
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